

The 31st October, 1985

No. 9/5/84-Lab/9177.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Hindustan Machine and Casting, Plot No. 36/27A, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 235/1983

between

THE MANAGEMENT OF M/S. HINDUSTAN MACHINE AND CASTING, PLOT NO. 36/27A,
FARIDABAD AND ITS WORKMEN

Present :—

Shri M. K. Bhandari for the workmen.

Shri R. C. Sharma for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the management of M/s. Hindustan Machine and Casting, Plot No. 36/27A, Faridabad, to this Tribunal, for adjudication :—

- (1) Whether the termination of service of the workers was justified and in order? If not, to what relief they are entitled?
- (2) Whether the workmen are entitled to grant of bonus at the rate of 20% for the year 1981-82. If so, to with what details?
- (3) Whether the workmen should be supplied Gur and Milk? If so, with what details?
- (4) Whether the workmen should be supplied shoes? If so, with what details?

2. Notices were issued to both the parties? It may be mentioned at the outset that on 2nd August, 1984, Shri M. K. Bhandari representative of the workmen, stated that he gave up all the claims mentioned in the reference except termination of services of Shri Sachidanand Singh claimant. Consequently, the only dispute that remains for determination is regarding the termination of services of Shri Sachidanand Singh. Shri Sachidanand Singh filed the claim statement on 14th August, 1984, in which it was alleged that he was employed by the respondent as Tool Room Turner on 7th June, 1979 and was drawing Rs. 450 per month, when his services were terminated. It was further alleged that he was General Secretary of the union, when he was suspended on 22nd April, 1982, and that a charge-sheet containing the false allegations was served on him on 28th April, 1982 when the domestic enquiry was ordered by the Management on 9th May, 1982. It was further alleged that the claimant was again charge-sheeted on 11th June, 1982 and he gave his explanation on 14th June, 1982. It was then alleged that on 6th August, 1982, his services were terminated by way of retrenchment, which order was illegal, and, therefore, he was entitled to reinstatement with full back wages.

3. The Management in its written statement dated 29th October, 1984 pleaded that the dispute was never espoused by the substantial number of workmen and that the reference was bad. It was further pleaded that the claimant was charge-sheeted by the Management on 27th April, 1982, but his services were terminated by way of retrenchment because previously the Management was employing 68 workers, but its strength was reduced continuously and it reached to the stage of 27 workmen in September, 1982, and that out of 8 Turners, only two Turners remained in service, who were senior to the claimant. It was further pleaded that now the strength came down to 20 workmen. It was also pleaded that service compensation was offered to the claimant, but he refused to receive the same and that the amount was sent to him by money order as well, but the same was received back. It was also pleaded that the claimant was gainfully employed.

4. The claimant in his rejoinder dated the 22nd November, 1984 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed :—

- (1) Whether the dispute has not been espoused by the substantial number of workmen? OPM
- (2) Whether the reference is bad as pleaded? OPM

(3) Whether the claimant was gainfully employed as pleaded? OPM

(4) Whether the termination of service of Shri Sachidanand Singh, workman was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the Management examined one witness and documents, Exhibit M-1 to M-12 have been tendered into evidence. The claimant appeared in the witness box. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

Issue No. 1 :

7. As already mentioned above, the dispute had now relates to the termination of services of Shri Sachidanand Singh. He was one of the persons, who had signed the demand notice alongwith 4 other office bearers of the association. The claim statement has also been signed by him. Consequently, the dispute was originally espoused by the Union on behalf of its members and the present dispute has been raised by the claimant, as mentioned above. The issue is decided accordingly against the Management.

Issue No. 2 :

8. The reference made by the Government is not bad because the names of 44 workers who were retrenched were mentioned in the list attached with the demand notice. The issue is decided accordingly against the Management.

Issue No. 3 :

9. WW-1 Shri Sachidanand Singh stated in cross-examination that he had worked in M/s. Vishwakarma Auto Industries for about 13 months and was turned out at the instance of the MW-1. The certificate Exhibit M-19, dated the 28th April, 1985 produced by MW-1 Shri Darshan Lal shows that the claimant joined services in July, 1984 of M/s. Vishwakarama Auto Industries, Faridabad. All this evidence, therefore, shows that the claimant remained gainfully employed for 13 months with effect from July, 1984. The issue is decided accordingly partly in favour of the Management.

Issue No. 4 :

10. The Management has examined MW-1 Darshan Lal Sethi the partner of the respondent factory who stated that they used to manufacture tractor parts in the factory for Escort Tractors Ltd., Eicher Tractors and Ford Tractors. He further stated that due to recession in the market in 1982, the work became less and that in January, 1982 they had employed 73 workers, but in August, 1982, the number came down to 60 while in September, 1982, only 27 workers remained in their employment and that at present, they had employed only 18 workers. He further stated that Exhibit M-1 was the application made by the claimant for the job in their factory, when he was employed as Tool Room Fitter Turner. He further stated that Tool Room had partially been closed and two turners, namely, Shri Gijraj Singh and Lal Bahadur, were working in the Tool Room, who were senior to the claimant. He further stated that the letter Exhibit M-2 was issued by the Management and that Exhibit M-3 was the reply given by the claimant, but no action was taken on that letter. He further stated that the work became less in their factory, due to which retrenchment notice Exhibit M-4 was given to the claimant, which was received by him, but he refused to receive the dues and retrenchment compensation, vide endorsement mark 'A' on the letter Exhibit M-4 which was in his hand. He further stated that the amount was sent to the claimant by money order, but he refused to receive the same and that the money order receipt was Exhibit M-5 while the money order coupons were Exhibit M-6 and M-7. He also stated that correct calculations was made on the same day and that Exhibit M-8 was written to the claimant and sent by registered post, vide postal receipt Exhibit M-9. He further stated that no new turner fitter had been employed in place of the claimant.

11. The claimant Shri Sachidanand WW-1 stated that he was employed by the respondent on 7th March, 1979 and was drawing Rs. 459 at the time of termination of services. He further stated that he was the general Secretary of the Union and was chargesheeted and suspended in April, 1984, but no enquiry was held even though he was chargesheeted again, by the Management. He further stated that he had been retrenched. He stated that he was employed in the Tool Room where two Turners were working and that the settlement talk with the management failed, when the matter was taken up in conciliation proceedings.

12. A perusal of the above evidence would show that 44 workers, including the claimant, were retrenched by the Management and their list was attached with the demand notice. MW-1 Shri Darshan Lal Sethi has deposed that due to recession in the market, the work became less and that the number of workers was reduced from 73 to 27 in September, 1982. In the retrenchment notice, these reasons have been given and it is mentioned that the Management was compelled to effect retrenchment, when the other steps taken by them did not bear any time and that seniority list of the workers had already been displayed by them. MW-1 Shri Darshan Lal stated that only turners were working in the Tool Room who were senior to the claimant. The Management has, therefore, given reasons for effecting the retrenchment in August, 1982. The testimony of MW-1 Shri Darshan Lal shows that the claimant refused to receive the dues including retrenchment compensation, on 6th

August, 1982 as mentioned in the endorsement mark 'A' in letter Exhibit M-4, dated the 6th August, 1982. On that date the registered letter Exhibit M-8 was sent to the claimant. The amount was also sent by money-order,—vide postal receipt Exhibit M-5, but the same was received back,—vide moneyorder coupons, Exhibit M-6 and M-7. This evidence shows that the claimant refused to receive his dues including the compensation etc., on 6th August, 1982, on which date the retrenchment took place and also refused to receive the amount when it was remitted by moneyorder on that very date. The Management thus complied with the provisions of section 25-F of the Industrial Disputes Act, 1947, by offering notice pay and compensation on the date of retrenchment.

13. It was argued that the termination of services of the claimant was mala fide because he was General Secretary of the Union and that no enquiry was held against him even though he was chargesheeted by the management. The Management has led evidence that no enquiry was held against the claimant on the basis of the chargesheet, but later on he was retrenched alongwith other 43 workers because there was less work and that the number of workers was reduced from 73 to 27, as already mentioned above. The Management has led evidence that only two turners, who were senior to the claimant, were working in the Tool Room. Consequently, it was a case of retrenchment and there is no force in the argument that the impugned order terminating the services of the claimant was mala fide. It may also be mentioned that on 3rd March, 1983, the settlement Exhibit M-12 took place between the management and some workers, to which the present claimant was a party and in that settlement, the management took 17 workers on duty as per settlement in that list, which shows that the claimant was not taken back on duty in that settlement. This shows that if the claimant had any grievances, he would not have signed that settlement.

14. In view of the above discussion it is held that the termination of the services of the claimant was justified and in order because the Management has given reasons for effecting retrenchment and complied with the provisions of section 25-F of the Industrial Disputes Act, 1947 as mentioned above. Consequently, the claimant is not entitled to any relief. The award is issued accordingly.

Dated, the 14th October, 1985.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 796/16/10/85,

dated the 16th October, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab/9180.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Perfect Pack Ltd., Plot No. 134, Sector-24, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 507/1983

between

SHRI KHUBI RAM, WORKMAN AND THE MANAGEMENT OF M/S PERFECT PACK LTD.,
PLOT NO. 134, SECTOR-24, FARIDABAD

Present :

Shri S.S. Gupta, for the workman.

Shri R. C. Sharma, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Khubi Ram, workman and the Management of M/s Perfect Pack Ltd., Plot No. 134, Sector 24, Faridabad, to this Tribunal for adjudication :—

Whether the termination of services of Shri Khubi Ram was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. In the demand notice, dated 11th June, 1983, it was alleged that the claimant was employed as Helper since 15th January, 1980 and was drawing Rs. 255 per month as wages. It was further alleged, that he proceeded on leave from 7th May, 1983 to 11th May, 1983 which was duly sanctioned and when he reported for duty on 1st May, 1983 he was not allowed to join duty and, as such, the termination of his service was illegal and he be reinstated with full back wages. The same plea was taken in the claim statement, dated 1st July, 1984.

3. The Management in its written statement, dated 24th August, 1984 pleaded that the reference was bad in law because the claimant was on the roll at the time of serving the demand notice. It was also pleaded that the claimant absented himself with effect from 11th May, 1983 without any intimation and that the letters written to him on 18th May, 1983, 31st May, 1983 and 16th June, 1983 had no effect in which he was asked to join duty. It was further alleged that in conciliation proceedings, the Management stated that the claimant had been charge-sheeted and was required to report for duty, but he did not do so and ultimately he was dismissed on 20th July, 1983.

4. The claimant in his rejoinder, dated 19th September, 1984 reiterated the plea taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 20th September, 1984 :—

- (1) Whether the claimant remained absent with effect from 11th May, 1984 without permission ? OPM
- (2) Whether the reference is bad in law ? OPM
- (3) Whether the claimant is gainfully employed ? OPM
- (4) Whether the termination of services of Shri Khubi Ram was justified and in order ? If not, to what relief is he entitled ? OPM.

Issue No. 2 :

6. The demand notice is dated 11th June, 1983. The letters Exhibit M-1, M-2 and M-3 were sent to the claimant on 18th May, 1983, 31st May, 1983 and 16th June, 1983 to join duty. In the conciliation proceedings, the Management took the plea that the name of the claimant existed on the rolls, but he did not report for duty in spite of several letters written to him. Exhibit M-5 is the letter, dated 20th July, 1983 on which date the claimant was dismissed. The Management has thus led evidence to show that the name of the claimant existed on the muster rolls upto 20th July, 1983. The plea of the claimant that his services were terminated on 12th May, 1983 cannot be accepted because his name was not struck off by the Management on this date. Consequently, when the demand notice, dated 11th June, 1983 was given, his name existed on the muster rolls of the management. Under these circumstances, the reference is premature and bad in law because the name of the claimant was not struck off from the muster roll when the demand notice was given. Consequently, it is not necessary to discuss the other issues on the merits. The award is passed accordingly.

Dated, the 14th October, 1985.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 800, dated 16th October, 1985.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.